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ABSTRACT

This bulletin provides information to clarify for Missouri school districts when Prior Written Notice is to be provided under the Individuals with Disabilities Education Act, what the content of a Prior Written Notice is to be, and in which circumstances procedural safeguards for children and parents must be provided. Missouri school districts are reminded they must provide Prior Written Notice: (1) prior to conducting any assessment as part of an initial evaluation; (2) prior to the initial placement; (3) before conducting any tests/assessments as part of a reevaluation; (4) whenever the Individualized Education Program (IEP) team determines that a change of placement is necessary; (5) any time the district refuses to initiate or change the identification, evaluation, educational placement or the provision of free, appropriate public education; (6) whenever a district evaluates a child and determines the child to be ineligible; (7) any time there is a change in the type or amount of services provided; and (8) upon the enrollment of a transfer student from another state when the district chooses to accept the out-of-state diagnostic evaluation report. The bulletin also explains the difference between a notice and a notification. (CR)

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TECHNICAL ASSISTANCE BULLETIN

FROM THE MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION, DIVISION OF SPECIAL EDUCATION

ISSUES IN EDUCATION

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NOVEMBER 1998

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Technical Assistance Bulletin

November 1998

from the Missouri Department of Elementary and Secondary Education, Division of Special Education

Issues in EDUCATION

Please copy and route to your staff

Prior Written Notice

NOTE: Statements within this document that are in **different type and bolded** reflect changes in the new requirements under reauthorization of IDEA 97 (Subpart E, procedural safeguards).

As a result of changes in the 1997 Reauthorization of the Individuals with Disabilities Education Act (IDEA), as well as findings by the Office of Special Education Programs (OSEP) during their April 1997 monitoring of the State of Missouri regarding requirements relating to the provision of Prior Written Notice, the Special Education School Improvement Section has prepared this technical assistance bulletin to clarify for districts:

1. when Prior Written Notice is to be provided,
2. what the content of a Prior Written Notice is to be, and
3. in which circumstances Procedural Safeguards for Children and Parents must be provided.

This bulletin will also explain the difference between a *Notice* and a *Notification.*

What does the Law require?

IDEA 97 still requires that a district provide the parent/legal guardian with a Prior Written Notice any time that it proposes or refuses to initiate or change the *identification, evaluation, educational placement or the provision of a Free Appropriate Public Education (FAPE).* The law also requires that a copy of the Procedural Safeguards accompany the Notice of Intent/Consent to Reevaluate. For all other Prior Written Notices, there must be a statement on the notice that informs parents that:

1. they have protections under the Procedural Safeguards and a means by which a copy of the Procedural Safeguards can be obtained, and
2. sources for parents to contact to obtain assistance in understanding the provisions of the Procedural Safeguards.

What actions by districts require a Prior Written Notice?

The actions taken by a district which necessitate the provision of Prior Written Notice are:

- Initial evaluation – Notice of Intent/Consent to Evaluate must be provided to the parent and written parental consent received prior to conducting any assessments as part of an initial evaluation. A description of any evaluation procedures the district proposes to conduct must be included as part of this Notice.
- Initial placement – A Notice of Intent/Consent for Initial Placement must be provided to the parent and written parental consent received prior to the initial placement of a student with a disability.
- Reevaluation – A Notice of Intent/Consent must be provided to a parent prior to the conducting of any tests/assessments as part of a reevaluation of a student with disabilities. As with initial evaluation, a description of the areas to be evaluated and tests/assessments to be used, if known, must be included as part of this notice. IDEA 1997 now requires that a district obtain written parental consent before conducting any tests/assessments as part of a reevaluation, unless, after the district has provided notice and made reasonable attempts to obtain consent, the parent has failed to respond.
- Change of placement – A Notice of Change of Placement must be provided whenever the IEP team determines that a change of placement is necessary. (See section following for requirement to provide Notice when there is a change of FAPE.)
- Action refused – Any time the district, at the request of the parent/guardian, *refuses* to initiate or change the identification, evaluation, educational placement or the provision of FAPE, the

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district must provide a Notice of Action Refused. Some examples of when this might occur are: parental request for Evaluation or Reevaluation or parental request for a specific special education or related service, modification or accommodation in the IEP.

- Ineligibility – A Notice of Ineligibility must be provided whenever a district evaluates a child and determines them to be ineligible for services under IDEA.
- Change in type or amount of services – A Notice must be provided to parents any time there is a change in the type or amount of services provided (see page 4 for explanation of requirement to provide Notice when there is a change in FAPE).
- Out-of-state transfer – Upon the enrollment of a transfer student from another state, the receiving district must provide Prior Written Notice when the district chooses to accept the out-of-state diagnostic evaluation report.

What are the contents of a Prior Written Notice?

IDEA requires that a Prior Written Notice include the following components:

1. description of the action proposed
2. explanation of why the action is taken
3. description of options considered to this action and why they were rejected
4. description of each evaluation procedure, test, record, or report used as a basis for the action
5. description of any other relevant factors considered
6. ***statement of parent's protection under the Procedural Safeguards and a means by which a copy can be obtained**
7. ***sources for parents to contact to obtain assistance in understanding the provisions of the Procedural Safeguards**

***Note**: These statements are not required to be included on any Notice in which it is required that a *copy* of the Procedural Safeguards accompany the Notice.

While the law clearly specifies the content of the Prior Written Notice, it does not dictate the form or format that a district must use for the notice. Notice may be provided through a letter to the parent/guardian, as long as all of the required components are included in the letter. Districts may also use a separate *notice* form. Finally, notice of a change in placement or provision of FAPE may be provided through the IEP document, as long as all of the required components of the notice are included in the IEP *and a copy* of the IEP is given to the parent.

When must a copy of the Procedural Safeguards for Children and Parents be provided?

IDEA 97 requires that a copy of the Procedural Safeguards be provided, at minimum, upon:

1. **Initial referral for evaluation** – At the point of referral, the district must provide to the parent/guardian, *without delay*, a copy of their Procedural Safeguards. *Without delay* generally means within 1-5 days of the referral. ***What is the point of referral?*** For a parent referral, it is the documented date that the district received either the verbal or written request from the parent to conduct an evaluation. For a district referral, it is the date that the screening/review team made the decision that an evaluation should be conducted.
2. **Each notification of an IEP meeting** – A copy of the Procedural Safeguards must accompany each notification of an IEP meeting. IEP notifications may be either verbal or written. If written, the Procedural Safeguards should accompany the written notification form. If the notification is verbal, the Procedural Safeguards should be provided to parents immediately in the most expeditious manner.
3. Reevaluation of the child – When the IEP team has made a determination that assessments need to be conducted in order to gather data as part of a child's reevaluation, a Notice of Intent/**Consent** to Reevaluate must be provided *and* a copy of the Procedural Safeguards must accompany this Notice.
4. Discipline – Procedural Safeguards must accompany each notification of a disciplinary action (see DESE discipline bulletins, November 1997).
5. Upon request for a due process hearing (a responsibility of the Department of Elementary and Secondary Education) – Whenever a parent/guardian files a request for Due Process with the Missouri Department of Elementary and Secondary Education, a copy of their Procedural Safeguards will be provided.

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Notification & Notice

The difference between a *Notice* and a *Notification*

As noted previously, IDEA requires that a Prior Written Notice (hereafter referred to as Notice) be provided any time that a district proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE). As mentioned above, this Notice also must be in writing, must contain certain statements and information and must be provided *prior* to the district taking any given action. IDEA also indicates some instances in which a district is required to *notify* parents of various actions it is taking. Like a Prior Written Notice, these *notifications* have certain statements/information that they must contain and they must be provided to the parent prior to the district taking any action. However, unlike a Notice, not all of these *notifications* must be in writing. Districts must be careful to document for any *notifications* given verbally, that the *notification* was given and all of the required components of the *notification* were conveyed to the parent/guardian. As with Prior Written Notices, some notifications require that Procedural Safeguards accompany them, and some do not.

Notification that no assessments are required as a part of reevaluation

If, as a result of the IEP team meeting for the reevaluation process, the team determines that no assessments need to be conducted in order to gather information to complete the reevaluation, the district must *notify* the parent of this decision. **The notification that no further assessments are necessary must contain the following:**

1. **what the determination was and the reasons for it, and**
2. **the right of parents to request an assessment to determine whether the child continues to be a child with a disability.**

This notification may be provided either verbally or in writing. It does not have to be accompanied by the Procedural Safeguards.

Note: The district shall *not* be required to conduct assessments unless requested by the child's parent. The district is also *not* required to conduct assessments if the parental request involves an issue other than continuing eligibility. In this case, if the district chooses not to conduct the requested assessments, they would need to provide a Notice of Action Refused.

Notification of an IEP meeting

For the most part, the requirements for this notification have not changed under the reauthorization of IDEA 97. Districts must still take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate. This requires

1. notifying the parents of the IEP meeting early enough to ensure that they will have an opportunity to attend; and
2. scheduling the meeting at a mutually agreed upon time and place. This notification may be provided either verbally or in writing. In either case, the required components are the same and must be either accompanied by or followed up with a copy of the Procedural Safeguards.

All IEP meeting notifications must contain the following:

- Purpose – All anticipated purpose(s) for the meeting must be listed on the notification. For students age 14+, or younger if appropriate, the notification must indicate that a purpose of the meeting will be the development of a statement of the *transition services needs* of the student. For a student age 16+, or younger if appropriate, the notification must indicate that a purpose of the meeting is the consideration of *needed transition services.*
- Time, date and location – The notification must specify the time, date and location for the IEP meeting. The time, date and location must be mutually agreed upon by both parties.
- Who will be in attendance – The meeting notification must indicate the name and/or role of those who will be in attendance at the meeting. For students age 14+ , and younger if appropriate, the notification must indicate that the student is being invited to the meeting. The notification must also indicate any other agency that will be invited to send a representative to the meeting.

Notification of Transfer of Rights

One year prior to the student's eighteenth (18th) birthday, the public agency shall notify both the student and the parents of the Parental Rights under Part B which will transfer to the student upon reaching the age of majority.

Notice of Change of Placement and *Notice* of Change of FAPE

In Missouri, districts have always been required to provide a Notice of Change of Placement whenever a *significant* change was made in the type or amount of services provided to a student with a disability. While the term *significant* has not been specifically defined, districts have been advised to provide Notice whenever a service was added or removed, or whenever a *significant* removal or change in the amount of time that a student with disabilities is with his/her non-disabled peers during the school day is determined necessary in order to provide FAPE. Previous guidance by the Department of Elementary and Secondary Education did not require districts to provide Notice *every* time that a change was made in the type or amount of services provided.

As a result of the State's monitoring by the Office of Special Education Programs (OSEP) and the Corrective Action Plan developed after the final report received from OSEP, it is now necessary for districts to provide Prior Written Notice *any time* that the type or amount of services are changed on a student's IEP. The Department is not distinguishing between a Notice of Change of Placement and a Notice of Change of FAPE. Districts may choose to provide a Notice of Change of Placement for any changes in the type or amount of services made on a student's IEP, or districts may choose to provide a Notice of Change of Placement as they have in the past whenever there is a *significant* change in the type or amount of services and then provide a Notice of Change of FAPE at other times. Whichever is chosen, Notice must now be provided *at any time* that the type or amount of services provided to a student with a disability is changed.

The chart below is included to give special education staff a handy reference for when Prior Written Notice or Notifications must be provided and what sort of Procedural Safeguards requirements accompany any given Notice or Notification.

As always, if you have compliance questions regarding Notices or Notifications or would like to obtain sample Notice or Notification forms, you may contact your Area Supervisor for Special Education or call our main office at 573-751-0699.

		Action May Be		*Provision of Procedural Safeguards (PS) Requirement*	
Step in the Special Education Process	***Action Required***	***Verbal***	***Written***	***Copy of PS***	***PS Statement on Form***
Initial Referral		✔	✔	✔	
Initial Evaluation	Notice of Action Intent/Consent		✔		✔
Refusal to Evaluate	Notice of Action Refused		✔		✔
Student found ineligible	Notice of Action Ineligibility		✔		✔
IEP Meeting (each meeting, including meeting to consider reevaluation)	Notification	✔	✔	✔	
Initial Placement	Notice of Action Intent/Consent		✔		✔
Reevaluation without further assessments conducted	Notification	✔	✔		
Reevaluation with assessments conducted	Notice of Action Intent/Consent		✔	✔	
District accepts out-of-state evaluation report and diagnostic conclusion	Notice of Action		✔		✔
District rejects out-of-state evaluation and diagnosis	Notification of IEP Meeting to Initiate Reevaluation	✔	✔	✔	
Change of FAPE (any change in type or amount of services provided) [See Change of Placement below]	Notice of Action		✔		✔
Change of Placement (any addition or removal of a service or "significant" removal or reintegration with non-disabled peers [See Change of FAPE above]	Notice of Action		✔		✔
Graduation	Notice of Change of Placement		✔		✔
District refuses services requested by parent	Notice of Action		✔		✔
District proposes/refuses change in diagnosis	Notice of Action		✔		✔
Transfer of parental rights (1 year prior to age of majority)	Notification	✔	✔		
Request for Due Process (must be made by parent to DESE)			✔	✔ (DESE provides)	
Discipline	Notification	✔	✔	✔	

Note: For those actions that require Prior Written Notice but DO NOT require provision of a copy of the Procedural Safeguards, the following statements must be included on the Prior Written Notice form:

1. A statement of the parent's protection under the Procedural Safeguards and a means by which a copy can be obtained, and
2. Sources for parents to contact to obtain assistance in understanding the provisions of the Procedural Safeguards.